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C O N F I D E N T I A L SECTION 01 OF 03 MANAGUA 002295

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TAGS: PGOV PREL PINR KDEM KWMN NU

SUBJECT: NICARAGUA: CRIMINALIZATION OF THERAPEUTIC ABORTION
A POLITICAL, RELIGIOUS LIGHTNING ROD

REF: A. MANAGUA 06 02630

¶B. MANAGUA 06 02599
¶C. MANAGUA 07 00964

Classified By: Ambassador Paul A. Trivelli for reasons 1.4 (b and d)

¶1. (U) Summary: Women's rights organizations, human rights NGOs, and physicians have reacted sharply to the Nicaraguan National Assembly's vote to include in the country's new Penal Code the criminalization of therapeutic abortion. Opponents of the criminalization of all forms of abortion have vowed to take the issue to the international courts. Judging by the blowback over the past weeks, and especially the outrage among former Sandinista feminists, the polarization caused by this decision will likely have a long shelf life. End Summary

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The Vote, No Exceptions
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¶2. (U) On September 13, 66 out of 92 deputies ratified the criminalization of all forms of abortion in article 143 of the Penal Code. The Sandinista National Liberation Front (FSLN) voted with the Liberal Constitutional Party (PLC) and the Nicaraguan Liberal Alliance (ALN). The ban includes "therapeutic abortion," i.e. where the life or health of the mother is at risk. All three deputies of the Sandinista Renovation Movement Alliance (MRS) voted against the decision. Jose Pallais, PLC deputy and president of the Commission on Justice, and a few other deputies abstained.

¶3. (U) This was the second time in a year that the Nicaraguan legislature voted in favor of the criminalization of all forms of abortion (Ref A). Efforts by human rights and women's organizations to appeal the special law against therapeutic abortion passed in 2006 under former President Bolanos similarly had failed. According to the new Penal Code, all forms of abortion will carry criminal penalties including incarceration of between one and three years for those found guilty of undergoing or performing an abortion, along with the suspension of the medical license for any physician charged with performing the illegal procedure.

¶4. (SBU) The casting of a "yes" vote by a majority of FSLN

deputies, effectively siding with most Liberals, struck a raw nerve among Sandinista dissidents and MRS members. Women's rights leader Ana Maria Pizarro captured the indignation of disgruntled women's organizations and Sandinista sympathizers by asserting that the FSLN had betrayed "without a trace of shame" the memory of party founders Carlos Fonseca and Carlos Nunez Tellez who fought for a secular state and the rights of women. Several female FSLN deputies, who are believed to hold personal views against the criminalization of abortion, excused themselves before the actual vote and did not voice any objections in the Assembly debate.

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Women's Groups Angered
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¶15. (SBU) A majority of Nicaraguans oppose abortion. However, the decision by the National Assembly to ban therapeutic abortion has galvanized civil society groups, turning the issue into a political hornet's nest. Leading opponents of the criminalization of all forms of abortion, including the Nicaraguan Feminist Movement, the Women's Autonomous Movement, the Women's Network against Violence, the women's health NGO Si Mujer, and the Nicaraguan Center for Human Rights (CENIDH), among others, consider the law a form of violence against women, and worry that poor women who already have the most limited access to healthcare will be most affected by the ban. In their view, the law represents a negation of the State's responsibility to protect the lives of 52 percent of the population. Denis Darce of the Permanent Commission for Human Rights (CPDH) publicly agrees that the penalization of therapeutic abortion represents a human rights violation.

¶16. (SBU) Beyond seeing the matter strictly as a women's rights or health concern, women's organizations and a number of left-leaning NGOs regard the Ortega government's support to ban all forms of abortion as a direct attack against the women's movement in general. They believe that the vote will strengthen the relationship between President Ortega and Cardinal Miguel Obando y Bravo and the Catholic Church. Fatima Millen of the Women's Network against Violence asserted to poloff that the FSLN vote was "payback" by the Ortega government against the women's organizations that sided with Zoilamerica Narvaez in her sexual abuse case against her adoptive step-father, Daniel Ortega (Ref. B). In the run-up to the 2006 presidential election, some women's organizations openly criticized then candidate Daniel Ortega of being a sex offender who was rewarded with impunity (Ref. C). Violeta Granera, director of the civil society organization Movement for Nicaragua, opined that this government is simply "anti-women."

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The Role of the Church?
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¶17. (U) Monsignor Leopaldo Brenes, President of the Episcopal Conference, denied media speculation that he had lobbied deputies by phone. Father Rolando Alvarez, spokesman for the Episcopal Conference, meanwhile, confirmed that the bishops had sent a letter to the deputies on September 7 which clearly explained that the Church did not regard medical intervention in the instance of an ectopic pregnancy or a miscarriage already underway as therapeutic abortion. The letter did maintain, however, that including any list of exceptions for therapeutic abortion was "too dangerous" because it could be "manipulated by abortionists." A statement from the Episcopal Conference of Bishops praised the National Assembly for putting an end to the "chain of death" spreading throughout Latin America.

¶18. (U) Using guidance that he reportedly received from the Catholic Church hierarchy, Pallais along with ALN deputy Luis Callejos, had introduced a motion that would have allowed a therapeutic abortion in extreme cases where the lives of both the mother and the fetus were deemed in grave danger, and the

interruption of the pregnancy was the only means of saving the life of the mother. Even though the Catholic Church apparently could have supported this formulation, a majority of the National Assembly voted on September 13 to strike this exception from the new Penal Code.

¶19. (U) Praising Pallais for his stance, Marta Maria Blandon of the Women's Feminist Movement, expressed regret that his motion to protect the mother was never considered because the issue had become politicized. For his part, Pallais maintained that the deputies had felt pressured by the Catholic Church, but that they failed to understand the full position of the bishops. He opined that the reason a majority of colleagues voted against the provision to allow therapeutic abortion in extreme cases was the fear that it would leave the door open to interpretation and permit other types of abortion. He lamented that while the Church was clear, the deputies were not.

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Homophobia in the Mix
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¶10. (U) During the National Assembly debate, a few deputies, most notably Freddy Torres and Wilfredo Navarro of the PLC, sought to discredit the protesters by labeling them "lesbian assassins" and "people with abnormal hormones and no morals" who had no business taking a stance on the matter of abortion. Speaking from the floor of the Assembly, Torres vowed, "Not one of these minority female assassins is going to impose their views here." He further pontificated that "Neither lesbians nor gays have any authority to approve therapeutic abortion because they will never be mothers or fathers." Torres lamented that the topic of abortion had divided the country in two, between those who believe in "a culture of death" and "those of us who believe in the culture of life." Agreeing that the only women in favor of abortion were homosexual, deputy Navarro scornfully called the female protesters "lesbians, lesbians, lesbians" during his turn at the microphone. Other PLC members, such as Enrique Quinonez, also skirmished with groups such as the Women's Network against Violence.

¶11. (SBU) Representatives of the Nicaraguan gay community worried that Torres and Navarro were only "fomenting homophobia and inciting hate and violence" with their comments. Norman Gutierrez of the Center for the Education and Prevention of AIDS, reminded the lawmakers that they were elected by a large number of homosexuals against whom they were now discriminating. Gutierrez, who was a candidate for the Alternative for Change Party in 2006, called upon gay, lesbian, and transgender Nicaraguans to be very careful about who they vote for in the municipal elections next year, claiming their community represented twenty percent of registered voters.

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Making an International Appeal
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¶12. (U) The consensus among civil society and women's rights organizations is that there is no point in fighting the case any further in the Nicaraguan justice system. However, many of the organizations opposed to the ban on therapeutic abortion, with the backing of CENIDH, plan to take the case to the international courts, either the United Nations, the Interamerican Court of Justice, or the Inter-American Commission on Human Rights (IACHR) at the OAS. CENIDH director, Vilma Nunez, has argued that the best course of action would be to go to the IACHR to file a complaint against the Nicaraguan government for violating the Constitution and the human rights of women.

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Comment
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¶13. (SBU) The controversy surrounding the criminalization of

therapeutic abortion has escalated beyond any legal and moral debate between the right-to-life and pro-choice camps and become a lightning rod for women's organizations, some civil society organizations, and human rights NGOs. With the first meeting of the International and Regional Courts of Justice convening in Managua the week of October 1, we expect that the movement against the ban on therapeutic abortion will use every opportunity to bring international attention to the issue and continue to frame it in terms of human rights.

¶14. (C) In our discussions with women's organizations and NGOs, we have made it clear that U.S. foreign policy does not condone or recognize the right to abortion. However, we will continue to closely monitor the domestic politics surrounding this issue, which appears to have taken on an interesting dynamic. It is not clear what Ortega's motives are in this vote, but he has clearly decided that he can endure the wrath of many leftist organizations that oppose the ban. Whether in the long run he can afford to alienate important elements of his political base remains an open question, and one that bears watching.

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